IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.102 (MS) OF 2006

Sharafat,
S/o Namulhaque,
R/o Mohalla Lodha Mandi,
Jwalapur, Pargana-Jwalapur,
District-Haridwar. .....Petitioners

Versus

1. Civil Judge (Junior Division), Haridwar, District Haridwar.
2. Mobin, S/o late Zinda,
3. Salim, S/o late Zinda,
4. Kallu, S/o late Zinda,
   2 to 4 R/o Mohalla Lodha Mandi, Jawalapur,
   Pargana-Jawalapur, District-Haridwar.

.....Respondents

Dated: 04.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Parikshit Saini, Advocate for the petitioner and Standing Counsel for the respondent no. 1. Both the parties have agreed that let the writ petition be disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 10th January, 2006 passed by the respondent no.1 in Civil Suit No. 104 of 1995 Sharafat Vs. Mobin and others (Annexure No.4 to the writ petition).

Briefly stated, a suit was filed the respondents no.2 to 4 seeking relief of permanent injunction restraining the respondents no.2 to 4 from interfering with the passenger of the petitioner. During the pendency of the case, the petitioner has preferred amendment application by which the amendment was sought regarding boundaries as well as dimension of the land. Further the petitioner has submitted that inspite of the injunction order dated 11.07.1997, the door has been opened on 14.09.2004. Certain consequential amendments have also been prayed. The Civil judge, Haridwar has rejected the amendment on the ground that the trial has already been started and therefore, the amendment cannot be allowed.

Counsel for the petitioner has placed reliance on the judgment of ***Pankaja and others Vs. Yellappa (D) by L.Rs. and others 2004 AIR SCW 5422*** where the apex Court after allowing the amendment has relied upon the judgment of ***Raghu Thilak D. John v. S. Rayappan, 2001, Sampath Kumar v. Ayyakannu, 2002 AIR SCW 3925, Estralla Rubber v. Dass Estate (P) Ltd., 2001 AIR SCW 3544.*** The relevant observation are quoted below:-

"We do not agree with the Courts below that the amendments sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of the case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief."

In view of the above, a writ of certiorari is issued quashing the order dated 10.01.2006

Writ petition is allowed. The matter is sent back to the court below for deciding the same in accordance with law.

No orders as to costs.

(Rajesh Tandon, J.)

04.08.2006

Rathour